



BellSouth Telecommunications, Inc.  
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Nashville, TN 37201-3300

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Regulatory Vice President

615 214-6520  
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June 4, 2002

Mr. Joe Werner, Chief  
Telecommunications Division  
Tennessee Regulatory Authority  
460 James Robertson Parkway  
Nashville, Tennessee

TARIFF FILING

0200679

Dear Mr. Werner:

SUBJECT: Tariff Filing for Contract Service Arrangement NC02-2142-10

Attached is a Contract Service Arrangement tariff filing of BellSouth Telecommunications, Inc., issued June 4, 2002. We request that this tariff be effective June 14, 2002.

**General Subscriber Services Tariff A**  
Section A5 - First Revised Page 333

This Contract Service Arrangement is being submitted to the Tennessee Regulatory Authority for review and approval. Details may be found in the Executive Summary which is included with this filing package.

On April 3, 2001, the Authority adopted new Rules in Docket No. 00-00702. In view of the Authority's expressed desire to implement these Rules as the Authority's policy pending final approval, BellSouth filed a tariff to voluntarily comply with these Rules, and that tariff became effective on August 15, 2001. Since these Rules have now been implemented as the Authority's policy, BellSouth is submitting this filing under provisions in those Rules which allow a 10-day interval for the Authority's review and approval of tariffs for special contracts. In addition, notwithstanding language in the CSA to the contrary, the termination liability limitation provisions described above will also apply in the event of early termination of contracts for discount-eligible tariffed services associated with this CSA.



(2)

We appreciate your returning a receipted copy as evidence of this tariff filing. Please call Paul Stinson at 214-3839 if you have questions or wish to discuss.

Yours truly,

A handwritten signature in cursive script that reads "Paul Stinson" followed by a stylized flourish or initials.

Attachment



**EXECUTIVE SUMMARY**  
**NC02-2142-10**

**INTRODUCTION**

The purpose of this filing is to introduce a Contract Service Arrangement that provides the customer with discounts in exchange for the Customer's agreement to attain an Annual Revenue Commitment.

**DESCRIPTION OF CONTRACT SERVICE ARRANGEMENT**

This Contract Service Agreement provides for a maximum discount of 10% on billing for discount eligible services as listed in the contract included with this filing for a term of 5 years. Descriptions of these discount eligible services are listed in Sections A3., A12., and A13. of the General Subscriber Services Tariff. The applicable terms and conditions are also contained in the contract included with this filing.

**REVENUE AND COST INFORMATION**

Revenue and cost information associated with this contract is filed under separate cover and is subject to a proprietary agreement.



## A5. CHARGES APPLICABLE UNDER SPECIAL CONDITIONS

### A5.6 Contract Service Arrangements (Cont'd)

#### A5.6.1 Rates and Charges (Cont'd)

- A. The following is a listing of rates and charges to subscribers requiring contract service arrangements: (Cont'd)

##### Case No. TN02-5017-00

This Contract Service Arrangement provides rates and charges for BellSouth® Centrex service and MemoryCall® service served out of a 5ESS central office for a minimum service period of thirty-six (36) months. Additional terms and conditions that are specific to this contract have been filed with the Tennessee Regulatory Authority and will be made available to interested customers.

- (1) BellSouth® Centrex service, Payment Plan 3

|  | Nonrecurring<br>Charge | 36 Months<br>Monthly Rate | USOC  |
|--|------------------------|---------------------------|-------|
| (a) Standard common equipment, each  | \$600.00               | \$-                       | MIACS |
| (b) Common equipment customized by the Company at the subscriber's request, each     | 750.00                 | -                         | MIACC |
| (c) Station Links Equipped with Caller ID, Flat Rate, each                           | 19.50                  | 31.16                     | M4LFH |
| (d) Station Links for Provision in a Different Serving Wire Center, Flat Rate, each  | 19.50                  | 31.16                     | M4LFM |
| (2) BellSouth® Centrex service   |                        |                           |       |
| (a) Standard Features, per station line, each  | -                      | -                         | CENAA |
| (b) Assumed Dial 9, per system   | 40.50                  | 1.10                      | M2DDA |
| (c) Network Access Register (NAR) Package, per NAR, Both-way, Flat Rate              | -                      | -                         | M9QCX |
| (3) MemoryCall® service, MemoryCall® Deluxe Voice Messaging Service                  |                        |                           |       |
| (a) Each Mailbox   | 15.00                  | 6.00                      | VMZ1X |
| (4) BellSouth® Desktop Complete  |                        |                           |       |
| (a) Per group of initial installed BellSouth® Centrex service non-ISDN Station Links | -                      | 1.00                      | WBB7W |

##### Case No. NC02-2142-10

This Contract Service Arrangement provides a ten percent (10%) discount on eligible tariffed services. Discount eligible services are found in Sections A3., A12., and A13. of this Tariff. In order to be eligible for this discount, the customer has agreed to attain an Annual Revenue Commitment on a regional basis. The duration of this Agreement is five years. Additional terms and conditions that are specific to this contract have been filed with the Tennessee Regulatory Authority and will be made available to interested customers.

(N)

(N)



**BellSouth Business<sup>SM</sup> Master Services Agreement**

This BellSouth Business<sup>SM</sup> Master Services Agreement ("Master Agreement") is among the BellSouth Companies identified in Exhibit 1 (collectively, "BellSouth"), BellSouth Business Systems, Inc., ("BBS"), on behalf of the BellSouth Companies, [REDACTED] ("Customer") (collectively, the "Parties"). In consideration of the mutual agreements herein, the Parties hereby agree as follows:

**1. General**

1.1 This Master Agreement, together with its attachments, including any orders ("Orders") issued thereunder ("Attachments") and exhibits ("Exhibits"), sets forth the terms and conditions under which BellSouth provides its communications-related services ("Services") and equipment ("Equipment") to Customer under orders placed by Customer and accepted by BellSouth. The Parties intend to supplement this Master Agreement with specific terms and conditions set forth in one or more Attachments. "Agreement" means the Master Agreement and all Attachments and Exhibits, which are incorporated herein by reference. If there is a conflict in terms between the Master Agreement and the terms of the Attachments, the terms of the Attachments will govern and control.

1.2 Customer may order Equipment and Services from an additional BellSouth Company by signing an Attachment, subject to and incorporating the terms and conditions of this Master Agreement, and setting forth the terms and conditions established by that BellSouth Company.

2. **Term.** The term of this Master Agreement commences on the date on which the Master Agreement is executed by BBS on behalf of the BellSouth Companies ("Effective Date") and ends on the date on which the term of the last Attachment hereto ends. The term and termination provisions for any Attachment are set forth in the Attachment. Upon the termination of any Attachment with respect to any BellSouth Company, the Master Agreement is deemed terminated with respect to such BellSouth Company as to the Services and Equipment covered by that Attachment. Under such circumstances, the Master Agreement and all other Attachments will remain in full force and effect with respect to the remaining BellSouth Companies and the Services and Equipment provided by each.

3. **BBS Functions.** BBS is acting on behalf of the BellSouth Companies and is not a provider of any Services or Equipment to Customer under this Agreement. During the term of this Agreement, Customer will deal directly with each BellSouth Company with respect to changes to, and reporting problems with, existing Services and Equipment, and questions about billing by the respective BellSouth Company.

4. **Prices and Payment.** Prices, fees, charges, or rates will be as set forth in the applicable Attachment, Order, Statement of Work, or in BellSouth Company rate schedules or pricing guides in effect from time to time, copies of which shall be provided to Customer.

5. **Taxes.** Unless otherwise provided in an Attachment, all charges and fees are exclusive of applicable federal, state or local taxes. Customer agrees to pay or reimburse the BellSouth Company providing the Service or Equipment for any and all sales and use taxes, duties, or levies imposed by any authority, government, or government agency (other than taxes levied on BellSouth's net income) resulting from the Agreement, the provision or use of any Service or Equipment or any activities hereunder. The relevant BellSouth Company may add such taxes to invoices submitted to Customer. Customer will be responsible for any ad valorem, property, or other taxes assessable on any equipment included in the Services and Equipment on or after delivery to the installation site.

<sup>1</sup> BellSouth Business<sup>SM</sup> is a service mark of BellSouth Intellectual Property Corporation.



## 6. Customer Responsibilities.

6.1 Customer agrees to comply with all applicable laws, rules and regulations in connection with the Services and Equipment and not to use any Services or Equipment in a way that would, or would assist any third party to, violate any law or be in breach of the Agreement. Customer agrees not to use, transmit or publish in connection with the Services and Equipment any information, software or other content in any manner that violates or infringes upon the rights of any others or use the facilities and capabilities of the Services and Equipment to conduct any business or activity, or solicit the performance of any activity, that is prohibited by law.

6.2 Customer's delay or failure to fulfill its responsibilities hereunder may result in an adjustment to the costs or the schedule for delivery of the Services and Equipment, and will release the BellSouth Company from its obligations hereunder to the extent that the BellSouth Company is adversely affected by such Customer delay or failure.

7. **BellSouth Company Obligations.** The Parties agree that each BellSouth Company is responsible only for the provision of those Services and Equipment and the terms and conditions specifically identified in the Attachment (and any supplement) applicable to such BellSouth Company, that the duties and responsibilities of each BellSouth Company are several and not joint, and that the Attachment under which a BellSouth Company provides Equipment and Services is not affected by the terms and conditions contained in any other Attachment to this Agreement.

## 8. Assignment and Resale.

8.1 Except as set forth below or in an Attachment, neither Customer or any BellSouth Company may assign or delegate its rights or the obligations without the prior written consent of the other, which consent will not be unreasonably withheld or delayed. Any attempted assignment or delegation without the prior written consent of the relevant Party will be void. Notwithstanding the foregoing, any BellSouth Company may, without Customer's consent, (A) assign or delegate this Agreement and/or any duties or obligations hereunder to any entity owned in whole or in part by BellSouth Corporation or by one or more of its direct or indirect subsidiaries, or (B) subcontract the performance of any of its obligations under this Agreement. Each BellSouth Company shall remain legally responsible for any Services or Equipment that is subcontracted. Except as otherwise specifically stated in this Agreement, the provisions of this Agreement are for the benefit of the Parties hereto and not for any other person.

8.2 Unless otherwise set forth in the applicable Attachment, Customer may not resell any of the Equipment or nonregulated Services without the prior written consent of the applicable BellSouth Company, which consent may be withheld in the sole and absolute discretion of the BellSouth Company.

## 9. Trade Name, Trademarks and Service Marks, Use of Materials, Marks and Information.

9.1 Neither Party is authorized to and will not use any name or mark of the other Party in any advertising, publicity or in any other commercial manner without the prior written consent of the other Party.



9.2 Customer may use, copy and distribute the materials relating to the Services for internal, noncommercial, informational purposes only. Except as authorized in this paragraph, Customer is not being granted a license under any copyright, trademark, patent or other intellectual property right in the material or the products, services, processes or technology described therein. BellSouth, its affiliates and/or any third party owner of such rights retain all such rights. Customer shall have no ownership or property rights in the Services or in any documentation provided in connection with the Services. Customer may make copies of such documentation solely for use in connection with its authorized use of the Services, and all such copies shall include all copyright, trademark and other proprietary notices appearing in the original documentation. Upon the termination of the Services to Customer, Customer shall return all copies of the documentation to BellSouth or certify destruction of such documentation.

9.3 All trademark, product and service marks contained on or associated with the Services and Equipment that are not BellSouth Company marks are the trademarks of their respective owners. References to any names, marks, products, services or equipment of third parties do not necessarily constitute or imply BBS's or BellSouth's endorsement, sponsorship or recommendation of the third party, information, product or service.

9.4 Neither Party will make any media release or other public announcement relating or referring to the Agreement without the prior written consent of the other Party.

#### 10. Confidential Information.

10.1 Except as set forth in this Section, or as otherwise expressly provided in this Agreement, each Party agrees that (i) all information communicated to it by the other and identified and marked as "confidential," whether before or after the date hereof, (ii) all information identified as confidential to which it has access in connection with the Services and Equipment, and (iii) this Agreement and the Parties' rights and obligations hereunder (collectively, "Confidential Information"), will be, and will be deemed to have been, received in confidence and will be used only for purposes of this Agreement. Each Party agrees to use the same means it uses to protect its own confidential information, but in no event less than reasonable means, to prevent the disclosure and protect the confidentiality of Confidential Information. No Confidential Information will be disclosed by the recipient Party without the prior written consent of the disclosing Party; provided, however, that each Party may disclose this Agreement and any disclosing Party's Confidential Information to those who are employed or engaged by the recipient Party, its agents or those of its affiliates who have a need to have access to such information in connection with their employment or engagement, provided the recipient Party notifies such persons of the obligations set forth in this Section and such persons agree to abide by such obligations.

10.2 The obligations set forth in subsection 10.1 above will not prevent any Party from disclosing information that belongs to such Party or (i) is already known by the recipient Party without an obligation of confidentiality other than under this Agreement, (ii) is publicly known or becomes publicly known through no unauthorized act of the recipient Party, (iii) is rightfully received from a third party, (iv) is independently developed without use of the disclosing Party's Confidential Information or (v) is disclosed without similar restrictions to a third party by the Party owning the Confidential Information. If Confidential Information is required to be disclosed pursuant to law, regulation, tariff or a requirement of a governmental authority, or in connection with an arbitration or mediation, such Confidential Information may be disclosed pursuant to such requirement so long as the Party required to disclose the Confidential Information, to the extent possible, provides the disclosing Party with timely prior notice of such requirement and coordinates with the disclosing Party in an effort to limit the nature and scope of such required disclosure. Upon written request at the expiration or termination of an Attachment or Order, all documented Confidential Information (and all copies thereof) owned by the requesting Party (if previously received by the terminating Party) will be returned to the requesting Party or will be destroyed, with written certification thereof being given to the requesting Party. The provisions of this Section will survive the expiration or termination of any Order, Attachment and this Agreement for any reason.



10.3 Confidential Information will not include any feedback, data, answers, questions, comments, suggestions, ideas or the like, that Customer sends to any BellSouth Company or to BBS relating to the Services or Equipment, unless Customer identifies it as Confidential Information. BellSouth and BBS assume no obligation to protect such information from disclosure and will be free to reproduce, use, and distribute the information to others without restriction. BellSouth and BBS will also be free to use any ideas, concepts, know-how or techniques contained in such information or developed by them, for any purpose whatsoever including but not limited to developing, manufacturing and marketing Services and Equipment incorporating such information. Nothing contained in this Section restricts the right and ability of BBS and BellSouth to use information concerning the execution of this Agreement and the provision of the Services and Equipment to Customer in internal publications.

#### 11. Intellectual Property Rights Infringement Indemnity.

11.1 If promptly notified in writing of any claim brought against Customer that the Equipment, software ("Software") or Services furnished under this Agreement (unless provided on an "as is" basis) infringe a United States patent, copyright, trademark, trade secret or other intellectual property right, BellSouth will defend that claim at its expense and pay all fees, costs or damages that may be finally awarded or resulting from a settlement. BellSouth's obligation in this Section is expressly conditioned upon: (i) BellSouth being notified promptly in writing by Customer of any claim or suit of which Customer is aware; (ii) BellSouth having sole control of the defense or settlement of any claim or suit, and Customer not making any compromise, admission of liability or settlement or taking any other action impairing the defense of such claim without BellSouth's prior written approval; (iii) Customer cooperating with BellSouth in all reasonable ways to facilitate the settlement or defense of any claim or suit; and (iv) the claim or suit not arising from Customer modifications, or from combinations of Services and Equipment provided by a BellSouth Company with services and equipment provided by Customer or others, or from Customer's use of such Services and Equipment other than in accordance with the applicable manufacturer's specifications.

11.2 If any Equipment, Services or Software becomes, or in BellSouth's opinion, is likely to become the subject of a claim of infringement, or if a final injunction is obtained against Customer prohibiting use of such by reason of infringement of a United States patent, copyright, trademark, or other intellectual property right, BellSouth will, at its option: (i) procure for Customer the right to continue using the applicable Services, Equipment or Software; (ii) replace it with non-infringing Equipment, Services or Software substantially complying with the Equipment, Services, or Software specifications; (iii) modify the Equipment, Service or Software so it becomes non-infringing and performs in a substantially similar manner to the original Equipment, Service or Software; or (iv) direct Customer to cease using the affected Equipment, Services or Software, in which case, the Services shall terminate immediately.

11.3 If the options set forth in Section 11.2 above are not reasonably available to BellSouth, then BellSouth may elect instead to return the portion of the price paid for the purchased Equipment or the one time fee paid for the licensed Software or any amounts prepaid by Customer for the affected Services for any period after BellSouth directs Customer to cease such use, which is in either case the subject or potential subject of an infringement claim, as then depreciated based on Customer's depreciation schedule used for federal income tax reporting purposes.

11.4 Customer will indemnify and save BellSouth harmless from and against all loss, liability, damage, and expense, including all reasonable counsel fees, due to claims for infringement of United States patents, copyright, trademark, or other intellectual property rights, or due to any other claims or causes of action by third parties of any nature whatsoever, arising from the use, in connection with the Services or Equipment, of equipment, software or information not provided by BellSouth, or otherwise relating to or arising out of Customer's use of the Services or Equipment.



12. Notices. Except as otherwise provided herein, any notices or demands will be given in writing sent by hand delivery, courier service, facsimile or registered or certified mail, return receipt requested, postage prepaid, to the Customer at the address set forth below and to the applicable BellSouth Company as set forth in Exhibit 1. All notices under this Agreement that are addressed as provided herein (a) if delivered personally or by courier service, will be deemed given upon delivery, (b) if delivered by facsimile, will be deemed given when confirmed and (c) if delivered by mail in the manner described above, will be deemed given on the fifth (5<sup>th</sup>) business day after the day it is sent. Either Party may change its address or respective contact for notification purposes by giving 10 business days' prior written notice to the other of the new address or designee.

Customer: 

### 13. Default.

13.1. Unless provided to the contrary in any applicable law, regulation or tariff, if either Party is in default of any of its obligations under the Master Agreement or its applicable Attachments, including Customer's refusal to accept conforming Services or Equipment, the other Party may, in addition to all other rights and remedies provided by this Agreement or by law or in equity, terminate the applicable Order or Attachment, and the BellSouth Company may declare all sums due or to become due under the applicable Order or Attachment immediately due and payable, and be entitled to recover all collection costs incurred, including legal interest. This provision does not allow termination of an Attachment which material terms and conditions have not been breached by the defaulting Party.

13.2 "Defaults" include, but are not be limited to, a Party's failure to perform a material term or condition contained in this Agreement or any applicable Attachment or Order, Customer's false statement or representation for the purpose of obtaining any Equipment or Services, a Party's insolvency, failure to pay debts as they come due, or if a Party becomes subject to any proceeding under the Bankruptcy Code or similar laws.

13.3. In the event that any BellSouth Company is prevented from providing any portion or all of the Equipment or Services to be provided by such BellSouth Company as contemplated in this Agreement by any law, regulation, requirement or ruling issued in any form whatsoever by judicial or other governmental authority (including, without limitation, the Federal Communications Commission), or if a notice from a government agency or department indicates that a BellSouth Company is not permitted to provide any portion or all of the Equipment or Services to be provided hereunder by such BellSouth Company, then, to the extent not prohibited by applicable law or regulation, such BellSouth Company may immediately cease providing the Equipment and Services without any liability to Customer. Nothing herein will be construed to require any BellSouth Company to seek a waiver of any law, rule, regulation, or restriction, or seek judicial review or appeal of any court order.

13.4 The BellSouth Company providing Services and/or Equipment to Customer under an Attachment will not be obligated to perform its obligations thereunder if Customer is in default of any of its obligations under the applicable Attachment, and may suspend or cancel any outstanding, unfulfilled orders without in any way affecting its rights under this Agreement. If the BellSouth Company elects to continue performing under any Attachment or Order, its actions shall not constitute a waiver of any default by Customer.

14. **Warranty Disclaimer.** UNLESS OTHERWISE SET FORTH IN AN APPLICABLE ATTACHMENT OR ORDER, THERE ARE NO WARRANTIES, EXPRESS OR IMPLIED (INCLUDING ANY REGARDING MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE), FOR EQUIPMENT FURNISHED OR SERVICES PERFORMED UNDER THIS AGREEMENT, AND BELLSOUTH EXPRESSLY DISCLAIMS SAME.



## 15. Limitation of Liability.

15.1 The following limitations of liability represent a material inducement to the Parties to enter into the Agreement and the Attachment(s) at the stated price(s). If additional risks or undertakings were contemplated by BellSouth, they would have been reflected in an increased price(s). In contemplation of the price, Customer acknowledges there is sufficient consideration for the limitation of damages and remedies set forth in the Agreement. **NOTWITHSTANDING ANYTHING IN ANY OTHER DOCUMENTS TO THE CONTRARY, NEITHER BBS NOR BELLSOUTH OR ITS UNDERLYING SERVICE PROVIDERS, INFORMATION PROVIDERS, LICENSORS, SUPPLIERS, MANUFACTURERS, EMPLOYEES, OR AGENTS WILL BE LIABLE TO CUSTOMER (OR TO ANY PERSON CLAIMING RIGHTS DERIVED FROM CUSTOMER'S RIGHTS) FOR ANY SPECIAL, INCIDENTAL, CONSEQUENTIAL, EXEMPLARY, PUNITIVE, ECONOMIC, OR INDIRECT DAMAGES OF ANY KIND, INCLUDING WITHOUT LIMITATION, LOST PROFITS, LOSS OF BUSINESS, OR DAMAGES AS A RESULT OF THE OPERATION OR MALFUNCTION OF SERVICES, OR DUE TO LOSS OF DATA, TOLL FRAUD OR OTHER UNAUTHORIZED USE, OR LOSS OF USE, INCLUDING INJURY TO PROPERTY, WHETHER ARISING AS A RESULT OF A BREACH OF WARRANTY OR OTHER TERM OF THIS AGREEMENT, OR WHETHER ARISING IN CONTRACT, TORT, NEGLIGENCE, BREACH OF STATUTORY OR OTHER LEGAL DUTY, PRINCIPLES OF INDEMNITY OR CONTRIBUTION, OR OTHERWISE, WHETHER OR NOT THEY, BBS OR BELLSOUTH HAD NOTICE OF THE POSSIBILITY OF SUCH DAMAGES OCCURRING. CUSTOMER EXPRESSLY ACKNOWLEDGES THAT THE PROVISIONS OF THIS SECTION SHALL APPLY TO ALL CONTENT OR OTHER SERVICES AVAILABLE THROUGH THE SERVICES. CUSTOMER AGREES IT WILL NOT IN ANY WAY HOLD BBS OR BELLSOUTH OR ITS UNDERLYING SERVICE PROVIDERS, INFORMATION PROVIDERS, LICENSORS, EMPLOYEES, OR AGENTS RESPONSIBLE FOR ANY SELECTION OR RETENTION OF, OR THE ACTS OR OMISSIONS OF, THIRD PARTIES IN CONNECTION WITH THE SERVICES (INCLUDING THOSE WITH WHOM BELLSOUTH MAY CONTRACT TO OPERATE VARIOUS AREAS OF THE SERVICE).**

15.2 This limitation of liability applies with equal force and effect to all subsequent Services performed or Equipment provided by BellSouth.

## 16. Severability.

16.1 Except as otherwise provided herein, this Agreement sets forth the entire agreement between the Parties with respect to the Equipment and Services, and supersedes any prior written or verbal proposals, agreements, understandings or other discussions respecting the same except for any currently existing contracts between any BellSouth Company and Customer which terms and conditions remain in effect until such contracts expire or are terminated by either Party. Neither Party will be bound by any provision contained in any purchase order, confirmation, correspondence or other communication from the other Party that is at variance with, in addition to or conflicts with any provision of this Agreement, unless such variance, addition or conflict is specifically identified and agreed to in writing by an authorized representative of each Party, which expressly references the appropriate provision of this Agreement. No agent, employee, or representative of BellSouth or BBS has any authority to bind BellSouth or BBS to any affirmation, representation, or warranty unless the same is specifically set forth in this Agreement or in a written agreement as provided above.



16.2 In the event that one or more of the provisions contained in this Agreement or incorporated herein by reference is invalid, illegal or unenforceable in any respect under any applicable statute, regulatory requirement or rule of law, then such provisions will be considered inoperative to the extent of such invalidity, illegality or unenforceability and unless a complete failure of consideration would result therefrom, the entire Agreement will be construed as if not containing the particular invalid or unenforceable provision or provisions, and the rights and obligations of the Parties hereto will be construed and enforced accordingly.

17. **Survival.** Any obligations of any Party, which by their terms would continue beyond the termination, cancellation, or expiration of this Agreement or any Attachment, will survive such termination, cancellation or expiration.

18. **Disputes.** To the extent permissible under applicable law, regulation or tariff, any dispute, controversy or claim arising under, out of, in connection with or in relation to this Agreement, or the breach, termination, validity or enforceability of any provision hereof (a "dispute"), if not resolved informally through negotiation between the Parties, will be submitted to non-binding mediation. The Parties will mutually determine who the mediator will be from a list of mediators obtained from the American Arbitration Association office located in the city determined as set forth below in this Section (the "AAA"). If the Parties are unable to agree on the mediator, the mediator will be selected by the AAA. To the extent permissible under applicable law, regulation or tariff, if any dispute is not resolved through mediation, it will be resolved by final and binding arbitration conducted in accordance with and subject to the Commercial Arbitration Rules of the AAA then applicable. Any arbitration pursuant to this Agreement must be commenced within one (1) year after the dispute has arisen. One arbitrator will be selected in accordance with such rules, and the arbitrator will allow such discovery as is appropriate, consistent with the purposes of arbitration in accomplishing fair, speedy and cost-effective resolution of disputes. Judgment upon the award rendered in any such arbitration may be entered in any court having jurisdiction thereof, or application may be made to such court for a judicial acceptance of the award and an enforcement, as the law of such jurisdiction may require or allow. Any negotiation, mediation or arbitration conducted pursuant to this Section will take place in Atlanta, Georgia. Other than those matters involving injunctive relief or any action necessary to enforce the award of the arbitrator, the Parties agree that the provisions of this Section are a complete defense to any suit, action or other proceeding instituted in any court or before any administrative tribunal with respect to any dispute or the performance or provision of the Services and Equipment by the relevant BellSouth Company. Nothing in this Section prevents the Parties from exercising their right to terminate this Agreement in accordance with the terms hereof.

19. **Excused Delay/Performance.** BellSouth will be excused from performance and will not be liable for any delay or damage caused, in whole or in part, by any occurrence beyond the reasonable control either of the relevant BellSouth Company or of its subcontractors or suppliers. Such contingencies include acts or omissions of any regulated telephone network and any other occurrence commonly known as force majeure, including without limitation, acts of war and terrorism, civil disobedience, embargoes, delay in transportation, failure by suppliers to deliver equipment, governmental action, acts of any third party, labor disputes, strikes, or other concerted acts of workers (whether of BellSouth or others), casualties or accidents, fire, explosion, flood, severe weather or other acts of God, power failure, shortage of labor or materials, or discovery of asbestos or other hazardous substance or any other causes or circumstances whether of a similar or dissimilar nature to the foregoing, which prevent or hinder the delivery of the Services or Equipment. The relevant BellSouth Company may cancel or delay performance hereunder for so long as such performance is delayed by such occurrence or occurrences, and in such event such BellSouth Company will have no liability to Customer.

20. **Waiver.** No failure on the part of either Party to exercise any right or remedy arising directly or indirectly under this Agreement will operate as a waiver of any right or remedy it may have, nor will an exercise of any right or remedy by either Party preclude any right or remedy otherwise available to such Party.



21. **Nonsolicitation.** Throughout the term of this Agreement and for twelve (12) months thereafter, Customer shall not employ, or attempt to employ, any of BellSouth's current or former employees with whom Customer has direct contact in connection with the performance of this Agreement.

22. **Governing Law.** To the extent permissible under applicable law, regulation or tariff, this Agreement, including the Exhibits and Attachments will be governed by the laws of the State of Georgia, without regard to its conflict of law provisions.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date(s) below.

Customer:

By: [REDACTED]

Printed Name: [REDACTED]

Title: LVP CTO

Date: 4/24/2002

BellSouth Companies Identified on Exhibit 1:  
By: BellSouth Business Systems, Inc.

By: [Signature]

Printed Name: Lisa Plawrence

Title: National Acct. Director

Date: 5/13/02



**EXHIBIT 1****LIST OF BELLSOUTH COMPANIES**

BellSouth BSE, Inc.  
BellSouth Communication Systems, L.L.C.  
BellSouth Long Distance, Inc.  
BellSouth MNS, Inc.  
Cingular Interactive L.P.  
Cingular Wireless L.L.C.

BellSouth Telecommunications, Inc.

Vice President / General Manager  
BellSouth Business  
2180 Lake Blvd.  
Seventh Floor  
Atlanta, GA 30319



**Regulated Services Attachment**

This Attachment supplements the terms and conditions of the BellSouth<sup>SM</sup> Business Master Services Agreement No. NC02-2142-00 ("Master Agreement") between Customer and the BellSouth Companies and applies to Orders for the purchase of regulated services ("Services") from BellSouth Telecommunications, Inc. ("BST"). The Master Agreement and this Attachment (collectively, the "BST Regulated Provisions") are or may be, a Contract Service Arrangement ("CSA") with respect to regulated BellSouth Services. No other Attachment constitutes any portion of any CSA.

**A. SERVICES****1. Regulatory and Other Contractual Considerations.**

1.1 Customer recognizes and agrees that the Master Agreement and this Attachment ("BST Regulated Provisions") are subject to and controlled by BST's tariffs including, but not limited to, the General Subscriber Services Tariff and the Private Line Services Tariff and all such revisions to said tariffs as may be made from time to time, and are not intended to replace or supersede existing tariffs. All Services included under the BST Regulated Provisions will be purchased in accordance with such approved tariffs in effect in each state. The rates, charges and provisions of such tariffs applicable to the Services will apply unless and except to the extent the BST Regulated Provisions contain express rates, charges and provisions specifically in conflict therewith (in which case the express rates, charges, and provisions of the BST Regulated Provisions will control to the extent permitted by applicable law.) BST agrees Customer will be provided any appropriate tariff decreases for any rate element.

1.2 Customer acknowledges that BST may be required in certain states to file and obtain approval of the BST Regulated Provisions when used in conjunction with a Contract Service Arrangement ("CSA") or Special Service Arrangement ("SSA") prior to the implementation of the contents of this Attachment. BST agrees to begin any necessary filings within thirty (30) calendar days after the Effective Date of this Attachment. In the event the BST Regulated Provisions are denied by a regulatory agency in any state or by another regulatory body with jurisdiction over this matter, this Attachment and any CSA or SSA shall be null and void and of no effect in that state.

2. **Order Attachment(s).** Customer may order Services by using the sample Order Attachment attached hereto as Appendix 1, at the recurring and non-recurring rates and charges agreed to by the Parties in accordance with the terms and conditions described in the applicable tariffs and Order Attachment. Customer may order additional existing or new services by submitting an appropriate Order Attachment properly authorized and submitted in accordance with BST's procedures. Rates for additional and/or new services will be in accordance with the applicable tariff rates in effect at the time the Order Attachment is accepted by BST or as otherwise stated in the appropriate Order Attachment. Customer agrees to pay for the Services included in all Order Attachments.

**3. Cancellation.**

3.1 If Customer cancels a Service ordered pursuant to an Order Attachment prior to the completed installation of the Service, but after the execution of the Order Attachment, Customer will pay all reasonable costs incurred in the implementation of the cancelled Service, not to exceed all costs that could apply if the work in the implementation of the Order Attachment had been completed.



3.2 If Customer terminates a Service ordered pursuant to an Order Attachment at any time prior to the expiration of the Service period set forth in the appropriate Order Attachment, Customer will, unless otherwise specified, pay all reasonable charges due or remaining as a result of the minimum service period agreed to by BST and Customer in the Order Attachment(s) ("Termination Charges").

3.3 Customer acknowledges it has options for its telecommunications services from service providers other than BST and it has chosen BST to provide the Services specified in each Order Attachment. Customer, therefore, agrees that in the event it terminates Services provided pursuant to an Order Attachment for a CSA or SSA, Customer will pay Termination Charges, except where a certified reseller of BST local service resells this Attachment to Customer and agrees in writing to assume all of Customer's obligations to BST under this Attachment.

#### 4. Service Period.

4.1 The Service Period for Services ordered under an Order Attachment shall be as specified in the applicable Order Attachment and shall commence the date that the installation of Service is completed.

4.2 At the expiration of the Service Period for any Service available pursuant to the tariff, Customer may continue the Service according to renewal options provided under the tariff. If Customer does not elect an additional service period, or does not request discontinuance of service, the Service will be provided at the month-to-month rate currently in effect. At the expiration of the Service Period for any CSA or SSA, Customer may convert to an available tariff offering for the specific service or may request a new CSA or SSA.

#### B. VOLUME AND TERM PROVISIONS.

5. Definitions. As used in this Attachment, the following words or phrases have the following meanings. If not otherwise defined herein, all capitalized words and phrases have the meaning set forth elsewhere in the Agreement.

5.1 "Annual Revenue Commitment" - the agreed-upon amount of billing each year to Customer for BST regulated services that Customer agrees to achieve for purposes of this Attachment. Customer's Annual Revenue Commitment is included in Appendix 2 to this Attachment.

5.2 "Baseline" - in Contract Year 1, the annualized monthly billing to Customer for BST regulated services during each year that is used to calculate the Annual Revenue Commitment. Baseline in subsequent years is the aggregate billing for the previous twelve (12)-month period prior to the application of any Discount.

5.3 "Contract Year" - the twelve (12)-month period during the term of this Attachment beginning on July 1, 2001 ("Effective Date"), or any subsequent twelve (12)-month period that begins on the anniversary of the Effective Date.

5.4 "Discount" or "Discount Level" - the percentage reduction applied to the monthly billed revenue for the BST services that are Discount Eligible and for which billing has occurred or will occur during the current billing period.

5.5 "Discount Eligible Services" - all BST local and intraLATA services purchased by Customer that are appropriate for a percentage reduction off the existing monthly billed revenue as mutually agreed to by Customer and BST. The Discount Eligible Services are listed in Appendix 2 to this Attachment.

5.6 "Expiration Date" - the date on which the term of this Attachment expires.



5.7 "Term" - the number of Contract Years or the number of months the Volume and Term provisions of this Attachment are effective. The Term of this Attachment is 5 Contract Years.

5.8 "V&T Eligible Services" - all regulated services purchased by Customer whose billing is used to calculate Baseline. Non-recurring charges, taxes, and publicly imposed surcharges are not used to calculate the Baseline and are not considered V&T Eligible.

#### 6. Annual Revenue Commitment

6.1 Customer and BST agree to an Annual Revenue Commitment in the first Contract Year of this Attachment of \$381,780.00. The Annual Revenue Commitment represents one hundred percent (100%) of Customer's Baseline billing.

6.2 Customer and BST agree that all recurring charges for V&T Eligible Services billed by BST to Customer during each year of this Attachment will be applied toward the Annual Revenue Commitment. Customer's progress toward meeting the Annual Revenue Commitment will be tracked by BST and measured in pre-discounted billed dollars.

6.3 Customer and BST agree to determine Customer's Annual Revenue Commitment at the beginning of each Contract Year. The Annual Revenue Commitment for each Contract Year will be expressed as one hundred percent (100%) of the Baseline billing for the Contract Year.

6.4 In the event the Annual Revenue Commitment is adjusted due to a Business Change, Higher Order of Service, or Tariff Change, as defined herein, Customer will be permitted to reduce its Annual Revenue Commitment levels contained in Appendix 2 by an amount equal to the adjustment made during the V&T Annual True-Up (as defined herein).

#### 7. Discount Level

7.1 BST will apply a Discount that is a percentage reduction off the monthly billed revenue for the total billed revenue associated with the Discount Eligible Services at the beginning of the Contract Year. The Discount Level, set forth in Appendix 2, will be effective on the first day of the month in which this Attachment was signed by both Parties.

7.2 Charges billed pursuant to the Federal or State Access Services tariffs, billing for taxes or publicly imposed surcharges, including but not limited to, the surcharges for 911 or dual party relay services, Local Usage, CSAs, SSAs, WATSSaver, and End User Common Line Charges, are not eligible for the application of the Discount. Billing associated with certain services may not be eligible for the application of a Discount in order to comply with applicable regulatory and legal requirements.

7.3 Charges billed pursuant to services discounted through other BST promotions or offers are not eligible for the application of the Discount.

7.4 Charges billed for V&T Eligible Services for which Customer has not paid will not be counted toward the Annual Revenue Commitment, or toward the amounts set forth in Exhibit 2, for purposes of determining a Discount Level attained by Customer.

7.5 Customer and BST will be jointly responsible for the identification of Customer accounts with V&T Eligible Services. Customer and BST agree that BST will not be responsible for failure to apply a Discount to a V&T Eligible Service if such failure results from Customer's failure to identify the relevant account. Additional V&T Eligible Service accounts may be added only by mutual agreement of the Parties.



8. **Annual Growth Incentive Award ("AGIA").** If Customer exceeds its Baseline by more than 3.0 percent during any Contract Year, Customer will receive an additional AGIA credit. The AGIA will equal 15.0 percent (15.0%) of the billed charges for V&T Eligible Services less the current Contract Year's Baseline. The AGIA, not to exceed \$10,000.00, will be calculated and applied at the time of the V&T Annual True-Up. AGIA credits resulting from Annual True-Up will be applied within thirty (30) days of the completion of Annual True-Up.
9. **Commitment Shortfall.** Customer agrees if it fails to meet its Annual Revenue Commitment during a given Contract Year, except as provided in Sections 12, 13, and 14, to the extent permitted by applicable law and regulation, BST will bill and Customer agrees to pay the difference between the actual billed revenue for the current Contract Year and its Annual Revenue Commitment ("Commitment Shortfall").
10. **Provision for Discounting Additional and New Services.** For purposes of this Attachment an "Additional Service" is an intraLATA service that is tariffed by BST on the Effective Date of this Attachment and is not considered an intraLATA Discount Eligible Service. A "New Service" is an intraLATA service that has been tariffed by BST after the Effective Date of this Attachment. Customer may submit a request to BST to obtain a Discount on an Additional or New Service under this Attachment.
11. **Acquisition of New Businesses.** In the event Customer acquires a new business or operation within the BST service area during the term of this Attachment, the services at these locations may be included under this Attachment upon the mutual agreement of BST and Customer. Should such an agreement be reached, BST and Customer will amend this Attachment, including the Annual Revenue Commitment level in Appendix 2, as appropriate to include such services. Any revisions due to acquisition will be made during the V&T Annual True-Up at the end of the year in which the acquisition occurred, and will affect the Annual Revenue Commitment for future years. V&T Eligible Services included in this Attachment as the result of an acquisition will be used in the calculation of an AGIA in the Contract Year in which the acquisition occurred.
12. **Business Change.** In the event of a divestiture of a significant part of Customer's business, a business downturn beyond Customer's control, a decision by Customer to close or consolidate locations that is based on events beyond the Customer's reasonable control, or a network optimization using other BST services, (collectively, "Business Change"), any of which significantly reduces the volume of network services required by Customer, with the result that Customer is unable to meet its Annual Revenue Commitment under this Attachment (notwithstanding Customer's best efforts to avoid such a shortfall), BST and Customer will cooperate to reduce Customer's Annual Revenue Commitment to the extent of any shortfall resulting from the Business Change. This provision does not apply to a change resulting from a decision by Customer: (i) to reduce its overall use of telecommunications; or (ii) to transfer portions of its traffic or projected growth to providers other than BST. Customer must provide BST written notice of the conditions it believes will require the application of this provision and shall describe such conditions with particularity. This provision does not constitute a waiver of any charges, including shortfall charges, incurred by Customer prior to the time the Parties mutually agree to amend this Attachment. This provision does not affect the application of termination charges pursuant to the tariff or other agreements.
13. **Higher Order of Service.** BST may offer Customer new technological features and capabilities that will provide additional value to Customer with higher functionality and increased capacity ("Higher Order of Service"). In the event Customer elects to incorporate such a Higher Order of Service into its network design, and the use of such Higher Order of Service results in Customer's being unable to meet its Annual Revenue Commitment under this Attachment, then, subject to all applicable regulatory requirements, BST agrees to reduce Customer's Annual Revenue Commitment to the extent of any shortfall resulting from the migration to a Higher Order of Service.



14. **Tariff Changes.** If during the term of this Attachment, BST requests and receives regulatory approval for price reductions on tariff services purchased by Customer and such price reductions cause Customer to be unable to meet its Annual Revenue Commitment under this Attachment, then subject to applicable regulatory requirements, BST agrees to reduce Customer's Annual Revenue Commitment to the extent of the shortfall resulting from the price reduction(s).

15. **Annual True-Up.**

15.1 Within 90 days of the end of each Contract Year, BST will conduct a review of Customer's revenue to determine if Customer achieved its Annual Revenue Commitment ("Annual True-Up"). During the Annual True-Up, BST will calculate any Commitment Shortfall in accordance with Section 9 and determine Customer's Baseline billing for the following year in accordance with Section 5.2. During the Annual True-Up, BST can also propose any adjustments to the Annual Revenue Commitment. Finally, during the Annual True-Up, BST and Customer will determine the Annual Revenue Commitment for the new Contract Year in accordance with Section 6.

15.2 Customer and BST agree that any credit resulting from the Annual True-Up will be applied as a credit on the BST bill for local and intraLATA services. Further, any debit resulting from the Annual True-Up for failure to meet the Annual Revenue Commitment or Termination Liability will be billed directly to Customer and Customer agrees to assume responsibility for all outstanding amounts.

16. **Termination Liability.**

16.1 If Customer desires to terminate the Volume and Term Provisions prior to their expiration, Customer must provide written notice of such termination 60 days prior to the effective date of termination. BST will bill Customer the following termination charges:

(a) The amount of Discounts received for the life of this Agreement or for the previous 12 months, whichever is less and

(b) The prorated portion of the Agreement implementation and tracking costs, calculated as follows:

Prorated Implementation and Tracking Costs = \$9,739.00 times the Contract Months  
Remaining divided by the Total Contract Months.

16.2 The application of termination charges pursuant to this section shall not affect the application of termination charges pursuant to the tariff or any other agreement.

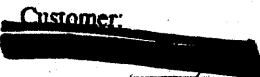


**C. MISCELLANEOUS PROVISIONS**

17. **Offer Expiration.** This offer shall expire on April 30, 2002.

18. **Extension of Term.** The term of this Attachment may be extended for ~~one~~ additional one-year periods upon the mutual agreement of the Parties. Customer shall provide BST written notice of its intent to renew at least 60 days before the beginning of each one-year renewal period.

Customer:



BellSouth Telecommunications, Inc.  
By: BellSouth Business Systems, Inc.

By:



By:



Printed Name:



Printed Name:

Lisa P. Lawrence

Title:

VPP CTO

Title:

Optimal Acct Dir

Date:


4/24/2002

Date:

5/13/02

Customer Initials

Date

  
4/24/2002



Regulated Services Attachment NC02-2142-10  
BBMSA No. NC02-2142-00

Appendix 1 to Regulated Services Attachment NC02-2142-10

**SAMPLE ORDER ATTACHMENT**

This Order Attachment is entered into pursuant to BellSouth Business<sup>SM</sup> Master Services Agreement No. NC02-2142-00.

Service: \_\_\_\_\_

Selected Service Period: \_\_\_\_\_

Service Specific Tariff: \_\_\_\_\_

Installation Date: \_\_\_\_\_

Customer's Billing Address: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Estimated Installation Interval: \_\_\_\_\_

Customer's Installation Address: \_\_\_\_\_  
\_\_\_\_\_

| ORDER DETAIL |      |             |                  |              |
|--------------|------|-------------|------------------|--------------|
| QUANTITY     | USOC | DESCRIPTION | NON-RECURRING \$ | RECURRING \$ |
|              |      |             |                  |              |
|              |      |             |                  |              |
|              |      |             |                  |              |
|              |      |             |                  |              |
|              |      |             |                  |              |
|              |      |             |                  |              |
|              |      |             |                  |              |
|              |      |             |                  |              |

Other Terms and Conditions:



## Appendix 2 to Regulated Services Attachment

1. Customer: [REDACTED]
2. Term: 60 Months

## Volume and Term Provisions

- A. Annual Revenue Commitment: \$381,780
- B. Baseline (First Year): \$381,780
- C. Discount Level 10.0%
- D. Growth Percentage: 3.00%
- E. Annual Growth Incentive Award: 15.00% (not to exceed \$10,000)
- F. Discount Eligible Services


BUS PLUS/BUS CHOICE  
CUSTOM CALLING  
DID  
ENHANCED CALLERID (ST-UP)  
ESSX  
EXPND AREA CALLING - BUS  
FLAT RATE BUSINESS  
FLAT RATE PBX TRUNKS/NARS  
MEGALINK CHANNEL  
MSG/MEAS RATE BUS  
NARs - ESSX/Digital ESSX Service  
NARs - MegaLink Channel Service  
NON LIST/NON PUBLISHED SVCS  
PRESTIGE  
PRIMARY RATE ISDN  
REMOTE CALL FWD  
SMARTRING IAS SPA DED RING  
TOUCHSTAR  
WATCHALERT



## TENNESSEE ADDENDUM

1. Customer and BellSouth acknowledge that various competitive alternatives are available to Customer in the State of Tennessee, including competitive alternatives to services provided herein, as evidenced by one or more of the following:
  - A. Customer has received offers for comparable services from one or more other service providers, including MCI, BTI, and Global Crossing;
  - B. Customer is purchasing or has purchased comparable services from one or more other service providers, including N/A (or N/A);
  - C. Customer has been contacted by one or more other service providers of comparable services, including MCI, BTI, and Global Crossing (or N/A); and
  - D. Customer is aware of one or more other service providers, from whom it can currently obtain comparable services, including MCI, BTI, and Global Crossing.
2. Customer and BellSouth agree that Customer's early termination of the Agreement without cause will result in damages that are indeterminable or difficult to measure as of this date and will result in the charging of liquidated damages as specified in this paragraph of this Addendum. Notwithstanding any provisions in the Agreement to the contrary, Customer and BellSouth agree that with regard to services provided within the State of Tennessee, this Paragraph of this Addendum sets forth the total amounts of liquidated damages the Customer must pay upon early termination of the Agreement without cause will be the lesser of the following:
  - a. the amount specified in Section 16 of this Agreement; or
  - b. the total of the repayment of discounts received during the previous twelve (12) months of service, the repayment of the prorated amount of any waived or discounted nonrecurring charge, and the repayment of the prorated amount of any documented contract preparation, implementation, and tracking or similar charges; or
  - c. six percent (6%) of the total Agreement amount; or
  - d. twenty-four percent (24%) of the average annual revenues of the Agreement if the term of the Agreement is longer than four (4) years.

Customer and BellSouth agree that these amounts represent a reasonable estimate of the damages BellSouth would suffer as a result of such early termination and that these amounts do not constitute a penalty.
3. Customer and BellSouth acknowledge and confirm their understanding that:
  - (a) Customer's agreement to pay the difference between the actual billed revenue for its V&T Eligible Services and its contract revenue commitment, as set forth in Section 9 of the CSA, does not apply upon Customer's early termination of the CSA; and
  - (b) Customer must therefore pay only the amount calculated in accordance with Section 16 upon early termination of the CSA.

  
4/24/2002



4. In the event that the customer terminates this tariff term plan without cause prior to the expiration of this term plan, the Customer shall pay a termination charge as specified in the BellSouth tariffs (Section A2.4.10.E.1 and B2.4.9.A.4, available on the Web at <http://cpr.bellsouth.com/pdf/tm/tm.htm>). The Customer may request a calculation of the termination charge at any time during the term of this contract. Based on the information available at the start of this contract, at the end of the first six (6) months of the contract period and for each six (6) month period thereafter, the estimated amount of the termination liability charge will be \$68,720. In any event, the estimated termination liability charge will not exceed this amount. Should the Customer elect to terminate this contract prior to the expiration date without cause, the actual termination charge will be calculated in accordance with the tariffs referenced above and based on information available at the time of termination.

Customer:

[REDACTED]

By:

Printed Name

By:

Authorized Signature

Title: KVP AZO

Date:

4/24/2002BellSouth Telecommunications, Inc.  
By: BellSouth Business Systems, Inc.

By:

Lisa P. Lawrence

Printed Name

By:

Authorized Signature

Title:

National Acct Director

Date:

5/2/02Customer Initial  
Date[REDACTED]  
4/24/2002